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IN THE

Supreme Court of the United States

October Term, 1964

No. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

vs.

RADIO CORPORATION OF AMERICA,

Respondent.

Respondent's Brief In Opposition To Petition For A Writ of Certiorari To The District Court of Appeal, Second District Of The State Of Florida

WILLIAM A. GILLEN
JESSE S. HOGG
GRANVILLE M. ALLEY, JR.

First Federal Building
P. O. Box 1438
Tampa, Florida 33601

Attorneys For Respondent

FREE PRESS PUB. CO., INC. - TAMPA, FLORIDA

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I

QUESTIONS PRESENTED

Petitioners' Question No. 1 contains an apparent error in that it refers to enjoining employees from crossing, instead of refusing to cross, a picket line. Upon the assumption that the latter wording

was intended, Respondent's first point of argument will be concerned with the question whether state courts are pre-empted from dealing with suits to enforce no-strike clauses in collective bargaining agreements, and will be concerned with Question No. 2 as written in the Petition.

II

STATEMENT OF THE CASE

The Respondent takes exception to certain parts of the Petitioners' Statement of the Case (Petition, p. 3) and would bring additional matters to the attention of the Court at this point.

Petitioners make it appear, through statements occurring at pages 3-5 of its Statement of the Case, that Respondent sought a blanket order preventing all picketing by the Petitioners, and enjoining the mere respecting of picket lines. While Respondent does contend that the honoring of a picket line breaches a no-strike, no-picketing, no-work-stoppage agreement, the issues here were not limited to the respecting of picket lines, and no blanket restraining order was sought or granted.

If this matter had proceeded to a hearing in the trial court, the Respondent would have offered evidence that the camera repairmen and photographers were not simply honoring the film processors' picket line but were engaged in a general strike of all three groups, begun consciously and deliberately after a joint meeting and joint decision, and that the photographers and

repairmen, entirely of their own accord, engaged in the same picketing and other strike activities as did the film processors.

The record in the Florida Supreme Court, filed here by Petitioners, will show that the temporary restraining order was carefully drawn (see subparagraph (b) thereof) to permit the film processors to strike and to picket, except insofar as they might picket to induce the photographers and repairmen to strike or stop work.

Respondent further excepts to the Petitioners' statement that the District Court of Appeal refused to acknowledge the principles of federal pre-emption or the requirement that state courts follow federal law (Petition, p. 5). The District Court of Appeal's opinion (Petitioners' Appendix pp. 10a — 27a) is wholly and entirely concerned with application of these principles to the facts of this case, finding that this Court has held that state courts are proper tribunals for the enforcement of collective bargaining agreements. The District Court's opinion also shows (Petitioners' Appendix, p. 15a) that the Petitioners did not there raise the question of application of federal law by the state court, being content to urge that the state court was pre-empted from dealing with the case in the first instance. Petitioners' Question No. 2, whether the Norris LaGuardia Act, 47 Stat. 70 et seq., 29 U.S.C., Sec. 101 et seq., is a rule of substantive federal labor law to be applied by state courts handling contract cases, was not raised or briefed in the trial court or in the District Court of Appeal. The District Court of Appeal, in its opinion, gratuitously observed (Petitioners' Appendix, p. 26a) that no act of Congress expressed a limitation upon state court jurisdiction in these cases, while dis-

cussing the presence of anti-injunction statutes in some of the states, but said nothing about the obligation to apply federal substantive law.

In view of its argument as to mootness made hereinafter, Respondent deems it further necessary to point out in this Statement that the strike and contract terms dispute underlying this case were finally settled and resolved through agreement upon and execution of a new collective bargaining agreement between Local 780, in behalf of the film processors, and the Respondent (See Motion and Amended Motion To Dismiss Or Quash The Petition For A Writ Of Certiorari To The District Court Of Appeal, Second District and affidavits filed with same in the record before the Florida Supreme Court).

III

ARGUMENT

Summary of the Argument

Point A - This Court should not grant a writ of certiorari to consider Petitioners' Question No. 1, whether state courts are pre-empted from taking jurisdiction of and dealing with suits to enforce no-strike clauses in collective bargaining agreements, because the question is well settled under this Court's previous decisions.

Point B - Those courts which have considered Petitioners' Question No. 2, whether the Norris-LaGuardia Act is a rule of substantive federal labor law to be applied in contract enforcement cases by state courts, have uniformly held to the contrary and this Court has consistently declined to review these decisions.

Point C - Petitioners' Question No. 2 was not seasonably raised in the trial or appellate courts below, and is therefore not properly in issue at this time.

Point D - The interlocutory determination of the District Court of Appeal below is not a final judgment or decree within the meaning of 28 U.S.C., Sec. 1257, as interpreted by decisions of this Court, so that certiorari jurisdiction is lacking in this case.

Point E - The record in this case shows that the case is moot and presents no actual case or controversy at this time, because the dispute and strike underly-

ing this case have been finally resolved through the execution of a new labor agreement, so that certiorari jurisdiction is lacking in this case.

POINT A

This Court should not grant a writ of certiorari to consider Petitioners' Question No. 1, whether state courts are pre-empted from taking jurisdiction of and dealing with suits to enforce no-strike clauses in collective bargaining agreements, because the question is well settled under this Courts previous decisions.

In *Dowd Box Co. v. Courtney,* 368 U.S. 502 (1962), this Court has clearly determined that suits for violation of collective bargaining agreements between employers and labor organizations fall within the jurisdiction of state courts, as well as federal courts, that violations of such agreements are not unfair labor practices subject to the exclusive jurisdiction of the National Labor Relations Board, and that *Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U.S. 448 (1957), does not, as Petitioners argue, require a different conclusion.

In *Smith v. Evening News Association,* 371 U.S. 195 (1962), this Court has further held that the courts, including state courts, continue to have jurisdiction of contract enforcement cases when the subject conduct is, or may be, an unfair labor practice subject to the Board's jurisdiction, and that the pre-emption doctrine of *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236 (1959), does not apply to suits to enforce collective

bargaining agreements. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), and *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), are to the same effect.

The other cases cited by the Petitioners are not in point. *In re Green*, 369 U.S. 689 (1962), contains no holding or opinion regarding applicability of the *Garmon* doctrine to contract cases, but only a holding that an attorney held in contempt of court is entitled to a hearing and an opportunity to show pre-emption if he can.

Ex parte George, 371 U.S. 72 (1962), is concerned with a suit between parties having no contractual relationship, and was not a suit to enforce a labor contract.

The other cases cited by Petitioners, which are *General Drivers, Warehousemen and Helpers, Local Union No. 89 v. American Tobacco Company, Inc., 348 U.S. 978 (1955); Teamsters, Chauffeurs Helpers and Taxicab Drivers Local Union No. 327 v. Kerrigan Iron Works, Inc., 353 U.S. 968 (1957); McCrary v. Aladdin Radio Industries, Inc.*, 355 U.S. 8 (1957); and *Bogle v. Jakes Foundry Co.*, 363 U.S. 401, (1960), are all cases involving situations where a state court had ordered common carrier employees to continue to serve picketed companies, are per curiam opinions, and are plainly not contract enforcement suits. In each case, the employer sued persons with whom he had no contractual relationship whatever.

Inasmuch as this Court's decisions are clearly and uniformly to the effect that state courts do have jurisdiction to deal with suits to enforce collective bargaining agreements, Respondent submits that Petitioners' Question No. 1 does not warrant the exercise of certiorari jurisdiction.

POINT B

Those courts which have considered Petitioners' Question No. 2, whether the Norris-LaGuardia Act is a rule of substantive federal labor law to be applied in contract enforcement cases by state courts, have uniformly held to the contrary and this Court has consistently declined to review these decisions.

Respondent is aware that denial of certiorari in a given case is not an indication of any opinion on the merits. However, it is noteworthy that Question No. 2 raises no novel question of federal labor law, nor does it raise one that has heretofore been considered sufficiently urgent to warrant review. It is also noteworthy that the lower federal and state courts, when presented with the question, have almost without exception thought that the Norris-LaGuardia Act does not become binding upon the state courts by virtue of this court's opinion in *Textile Workers Union v. Lincoln Mills,* supra. This Court has declined to review this question in such cases as *Philadelphia Marine Trade Ass'n v. Int'l Longshoremen's Ass'n, Local 1291,* 382 Pa. 326, 115 A.2d 733, cert. denied, 350 U.S. 843 (1955); *McCarroll v. Los Angeles County District Council of Carpenters,* 49 Cal.2d 45, 315 P.2d 322 (1957), cert. denied, 355 U.S. 932 (1958); and *McLean Distributing Co. v. Brewery & Beverage Drivers, Warehousemen & Helpers, Local 993,* 254 Minn. 204, 94 N.W.2d 514, cert. denied, 360 U.S. 917 (1959).

The Circuit Court of Appeals for the Third Circuit has recently rendered a thorough and exhaustive opinion (*American Dredging Co. v. Local 25, Marine Division, International Union of Operating Engineers, AFL-CIO,* 338 F.2d 837 (1964)) holding that the limitations of Norris-LaGuardia do not extend to the states, and this Court as recently as March 8, 1965, denied a petition for

certiorari in that case (*Local 25, Marine Division, International Union of Operating Engineers v. American Dredging Co.*, Docket No. 830, cert. denied March 8, 1965, not yet reported).

The Respondent would suggest that nothing has occurred since those cases to give the question greater urgency or to cause review to be more warranted.

POINT C

Petitioners' Question No. 2 was not seasonably raised in the trial or appellate courts below, and is therefore not properly in issue at this time.

The question whether the Norris-LaGuardia Act states a rule of substantive federal labor law, which the Florida courts were obligated to apply under the holding of *Lincoln Mills*, was not seasonably raised in the trial court or in the District Court of Appeal, but was first pleaded in Petitioners' petition for certiorari to the Florida Supreme Court. Accordingly, Petitioners' Statement of the Case does not, as required by Supreme Court Rule 23 (1) (f), show that this question was properly raised at any point during trial or District Court of Appeal proceedings.

The record in the Florida Supreme Court, filed here by Petitioners, will show that Petitioners' "Motion for Dissolution and To Vacate and To Set Aside Temporary Restraining Order and To Dismiss Action" filed in the trial court on November 1, 1963, raised the pre-emption issue only. The trial court's order of dissolution and dismissal entered November 4, 1963, shows that it was based solely upon pre-emption.

The opinion of the District Court of Appeal (Petitioners' Appendix, pp. 12a and 15a) shows that the issue brought to and resolved by that court was the issue of pre-emption.

Petitioners' Statement of the Case does not assert that the Norris-LaGuardia question was raised prior to proceedings in the Florida Supreme Court, but states only that the District Court of Appeal treated both questions raised here. The apparent reference is to the court's gratuituous observation (Petitioners' Appendix, p. 26a) that no act of Congress expresses a limitation on state court jurisdiction, an observation made in the course of distinguishing cases decided under state anti-injunction acts. This simple statement that Congress has not expressly divested state courts of jurisdiction to enjoin breaches of contract hardly constitutes a treatment of Petitioners' significantly different contention that the rule of Norris-LaGuardia comes indirectly to the state courts as a rule of substanitve federal labor law within the holding of *Lincoln Mills*. Petitioners' briefs to the District Court of Appeal contained no mention of the Norris-LaGuardia Act, and presented the pre-emption issue only.

It would appear that this failure to rely upon Norris-LaGuardia below goes directly to this Court's jurisdiction under 28 U.S.C., Sec. 1257(c), since jurisdiction is there predicated upon the setting up or claiming of a right, privilege or immunity under a federal statute, and that clearly was not properly done, in regard to the Norris-LaGuardia Act, below. This Court has held, in *Michel v. State of Louisiana*, 350 U.S. 91 (1955), rehearing denied 350 U.S. 955 (1956), that a contention not raised below is not properly in issue, and the same

result has been reached in *Pennsylvania R. Co. v. Illinois Brick Co.*, 297 U.S. 447 (1936); *Beauharnais v. People of State of Illinois*, 343 U.S. 250, rehearing denied 343 U.S. 988 (1952); and *Walters v. City of St. Louis, Mo.*, 347 U.S. 231 (1954).

With regard to the belated and post-appellate presentation of this question to the Florida Supreme Court in a petition for a discretionary writ of certiorari, this Court has held that a question presented to the Florida Supreme Court, even in the context of a case clearly before the court on appeal, in a motion for rehearing, was not seasonably presented and was not before this Court on certiorari (*Hanson v. Denckla*, 357 U.S. 235, rehearing denied 358 U.S. 858 (1958)). The opinion cited *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945.)

Respondent submits that Petitioners' failure to seasonably raise the Norris-LaGuardia question below has resulted in a lack of jurisdiction in this court to consider that question, and that certiorari on Petitioners' Question No. 2 should accordingly be denied.

POINT D

The interlocutory determination of the District Court of Appeal below is not a final judgment or decree within the meaning of 28 U.S.C., Sec. 1257, as interpreted by decisions of this Court, so that certiorari jurisdiction is lacking in this case.

The opinion of the District Court of Appeal (Petition, Appendix D, page 10a) shows that the matter before that court was an "Interlocutory Appeal from the Circuit Court for Brevard County." That opinion (Petition, Appendix D, pages 12a-13a) further shows that Respondent was before the District Court of Appeal for the sole purpose of securing reinstatement of a tempor-

ary restraining order in the trial court, as distinguished from any final order, and that there had been no answer filed in the trial court or any trial or hearing there on the merits of the case. The sole effect of the interlocutory appellate order was to reinstate the temporary restraining order in the trial court at this early stage of the case, subject to the trial court's final determination of the cause (Petition, Appendix D., page 27a).

The Petitioner has taken no steps to bring this action to a final conclusion in the trial court preparatory to seeking review in this court. The record from the Florida Supreme Court, filed with the Petition, will show that the Respondent filed a motion and amended motion in the Florida Supreme Court, to dismiss or quash the petition for certiorari filed in that court. These motions were accompanied by uncontroverted affidavits of attorneys and by other exhibits (including a Motion to Vacate Notice of Dismissal filed by Petitioner in the trial court), all of which showed without dispute that the Petitioners took no steps at all in the trial court after the interlocutory appeal other than filing a motion to vacate Respondent's voluntary notice of dismissal. They thereafter failed to pursue that motion, and have never sought any hearing or action of the court upon it.

In summary, this Court is being asked to review the most conditional and temporary order that a trial court can enter, in a case which has never been brought to issue and in which no effort has been made to obtain a final and properly reviewable order.

In *Montgomery Bldg. & Const. Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178 (1952), this Court refused to review the action of the Supreme Court of Ala-

bama in upholding and refusing to dissolve a trial court's temporary restraining order enjoining picketing by labor organizations. The Court held that the express requirement of finality contained in 28 U.S.C., Sec. 1257, resolved the question and left no room for interpretation. Answering the argument that waiting for a final decree would moot the issue and frustrate the picketing, the Court observed that an interlocutory order can readily be converted into a final decree. The Petitioners here could suffer no detriment or frustration of picketing by securing a final decree before seeking a writ of certiorari, as the facts regarding mootness and any frustration of picketing or strike activity would be the same upon final decree as after termination of these interlocutory proceedings. Indeed, it is possible that the Petitioners might have prevailed in a trial on the merits, on the issue of irreparable injury or some other issue, apart from the question involved here, and might have thus become free to strike or picket while the dispute continued. In any event, there is at this time no reason why the requirement of finality should be dispensed with, in terms of any urgent need, or even any desire, to resume striking or picketing.

The dissent in the *Montgomery* case placed emphasis upon the desirability of an early decision, apparently upon the assumption that the labor organizations involved in that case would still wish to resume picketing after the certiorari proceeding. That, of course, would not be true in the present case, which involved a sympathy strike and picketing in support of contract negotiations which are now concluded.

Admittedly, the holding in the *Montgomery* case has been modified by this Court's later decision in *Local No.*

438, Construction & General Laborers Union, AFL-CIO v. S. J. Curry, 371 U.S. 542 (1963). The Respondent submits, however, that *Curry* does not obliterate the rule stated in *Montgomery,* but only denies its application to cases containing the factors present in *Curry,* described by this Court as being a small class of cases.

As opposed to *Curry,* the present case is a contract enforcement action, and is therefore clearly within the jurisdiction of state courts, according to the cases cited under Point A, apart from the question of what relief the state court, applying federal law, may grant. There is no valid claim here that the state court was without jurisdiction to deal with this case. The remaining claim is that the Norris-LaGuardia Act is a rule of substantive federal law which the state court was obliged to apply in this case in determining Respondent's entitlement to injunctive relief. There is no contention that the Norris-LaGuardia Act was in the first instance a direct federally imposed limitation upon state court jurisdiction. Rather, the claim is that Norris-LaGuardia's prohibition comes indirectly to the state courts via the *Lincoln Mills* rule requiring the application of "substantive principles of federal labor law."

According to the *Curry* opinion, this Court granted certiorari to review an interlocutory order in that case because the issue was not, as it is here, "whether a [Florida] court has erroneously decided a matter of federal law" in a case within its jurisdiction, but was whether the state court had erroneously asserted its ju-

isdiction "to deal with" a controversy beyond its power and within the exclusive domain of the National Labor Relations Board (*Curry*, 371 U.S. 542, at 548).

Nor is this a case of separately litigated issues, as in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), cited in *Curry*. Indeed, up to this point, the question of Norris-LaGuardia's being applicable to the case as a rule of substantive law has not been litigated at all, due to the Florida Supreme Court's denial of certiorari, as shown under Point C herein.

Denial of certiorari here would not, as the Court said in *Curry*, leave the Petitioners subject to unlawful restraint during further proceedings to secure a final order, or result in rendering illusory any rights they may have, thereby permitting any erosion of federal labor policy or Labor Board jurisdiction, because the contract dispute underlying this case is over, unlike the prevailing wage dispute in *Curry*, which would presumably continue indefinitely, and there is no Labor Board jurisdiction to be eroded.

Neither is this a case such as *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379 (1953), also referred to in *Curry*, in which a state supreme court's overruling of a demurrer, equivalent to the issuance of a temporary injunction in the trial court, was held sufficiently final to come within 28 U.S.C., Sec. 1257. In that case, the petitioning employee had in fact raised and litigated, in the trial court and on appeal, his claim that the Federal Employers' Liability Act precluded his being enjoined. As has been previously pointed out, Petitioners here have not seasonably raised or litigated the Norris-LaGuardia issue in the trial court or District Court of

Appeal. In the language of *Pope*, this issue is not "in fact ripe for adjudication" (345 U.S. at 382).

Nor is this a case presenting the other factors present in *Pope* which were emphasized there and in *Curry* by this Court, namely, that the petitioner there had no further factual or legal issues to present to the trial court, and freely conceded that he had none, and that the merits of the issues had already been raised and resolved in a hearing on the temporary injunction.

The question of irreparable injury has not been decided on the merits, and it is not possible, in the present state of the record, to say what the other factual issues would have been if Petitioners had filed an answer or had there been a hearing to determine whether a temporary or permanent injunction should issue. Certainly, it would be wholly premature and speculative to say now that there were no factual issues between the parties.

With regard to unresolved legal issues, it is immediately apparent that the very issue upon which review is sought, whether Norris-LaGuardia is a rule of substantive federal labor law to be applied by state courts, remains unresolved in the trial court and in the District Court of Appeal. The existence of irreparable injury, justifying an injunction as opposed to damages, is a legal issue as well as a factual one. The Petitioners do not concede, as in *Pope*, that they do not have such defenses to offer in the state court, and, indeed, it is not within their power to make such a concession, which would involve predicting the minds and opinions of the trial and appellate judges. After the interlocutory appeal, it could not

be said here, as this Court said in *Pope*, that nothing remained to be done but the mechanical entry of judgment by the trial court.

Respondent submits that the requirement of 28 U.S.C., Sec. 1257, as to finality is not satisfied in this case.

POINT E

> The record in this case shows that the case is moot and presents no actual case or controversy at this time, because the dispute and strike underlying this case have been finally resolved through the execution of a new labor agreement, so that certiorari jurisdiction is lacking in this case.

When the Petitioners petitioned the Florida Supreme Court for a writ of certiorari to the District Court of Appeal, the Respondent moved to dismiss the petition because the case had become moot at that time. With its motion and amended motion to dismiss, Respondent filed affidavits showing that the dispute between the parties had expired due to the signing of a new labor agreement, and that no controversy remained. Thereafter, the Florida Supreme Court denied certiorari per curiam, possibly because of the absence of any continuing case or controversy. These matters will appear in the Florida Supreme Court record filed by Petitioners.

The decisions of this Court show that it too declines to give opinions upon moot questions or abstract propositions (*Mills v. Green*, 159 U.S. 651 (1895)), and that it does not decide arguments after events have put them to rest (*Doremus v. Board of Education of Borough of Hawthorne*, 342 U.S. 429 (1952)), because such questions present no actual case or controversy and are there-

fore actually beyond the limit of the Court's function (*Local No. 8-6, Oil, Chemical & Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363 (1960).

The decision in *Local No. 8-6*, above, would appear to be dispositive of the present Petition. In that case, a union sought review of a state court judgment enjoining a strike against a public utility which had been seized and operated for a time by the state. As in this case, the strike enjoined was in support of contract negotiation demands, although not in breach of a no-strike clause. Observing that the dispute had resolved itself and terminated due to the execution of a new labor agreement, this Court found the case moot and unreviewable. The Court considered the argument that a refusal to review might result in a repetition of allegedly unconstitutional activity, but rejected that argument as being insufficient to justify review of a moot case, observing that the same contention had been made and rejected in *Harris v. Battle*, 348 U.S. 803 (1954) and in other cases. Indeed, if the likelihood of future erroneous decisions by state courts were enough to justify review of a moot case, it would seem that the rule requiring an actual, live case or controversy would be wholly vitiated, for the likelihood of similar decisions by the same court in future cases is always present.

It appears to the Respondent that the present case is even more clearly moot than *Local No 8-6* was. In *Local No. 8-6*, the union was at the time being sued for monetary penalties under the state statute being attacked, and the returned strikers continued to be subject to loss of seniority rights under the seizure statute, so that the case had some aspects of a live controversy. Even so, this Court refused to anticipate the outcome of the suit

for monetary penalties, or to assume an unlikely deprivation of seniority rights, but observed that those cases, if and when they developed, could be brought to this Court independently and as live cases.

The dissent made in *Local No. 8-6* would not apply, in any of its parts, to the present case. The dissent emphasized the continuing liability of the union and its members for monetary penalties and loss of seniority, the fact that the state supreme court had treated the case as being alive, and the belief of the dissenting Justices that the question was one of state court jurisdiction. In the present case, there is no related litigation or any prospect of any, and no question of punitive action against employees. Nor has the state court treated the case as other than moot. The new contract was signed after the District Court of Appeal proceeding, and the Florida Supreme Court refused to take the case after the dispute was settled. Further, the question here does not arise in the context of a state court's acting entirely outside its jurisdiction and encroaching upon that of the National Labor Relations Board, the question being whether the court, acting within its jurisdiction, should apply the Norris-LaGuardia rule as a rule of substantive federal law.

This Court has impliedly recognized the continuing validity of *Harris v. Battle* and *Local No. 8-6* in its more recent opinion in *Division 1287, Amalgamated Ass'n of Street, Electrical Railway and Motor Coach Employees of America v. Missouri*, 374 U.S. 74, rehearing denied 375 U.S. 870 (1963), in distinguishing that case from the earlier two for the reason that the underlying labor dispute in *Amalgamated* was continuing and unresolved at the time when review was sought.

The present status of *Harris* and *Local No. 8-6* is admittedly rendered somewhat unclear by this Court's opinion in *Liner v. Jafco, Inc.*, 375 U.S. 301 (1964), where the Court reviewed a state court injunction against a union's picketing of a construction site in protest of wage levels, although the construction was completed when review was sought.

Neither *Harris* nor *Local No. 8-6* was mentioned or distinguished in *Liner*, but a comparison of these cases and the present case leads to the conclusion that *Liner* should not apply to the present case.

While the Court, in *Liner*, cited the possibility of an action by the union for wrongful injunction as giving its decision a present right upon which to operate, it is not at all clear from the opinion that this circumstance standing alone would have been sufficiently substantial and likely to happen to warrant a review. Whether the union would ever think it worthwhile to bring such an action is speculative and problematical, especially in view of the probability that only nominal damages would be recoverable since the union, in such cases, suffers no property damage or loss of money, but instead suffers the loss of an alleged right, the value of which is not measurable in money.

It seems more likely that the factors in the *Liner* case which justified review despite the completion of the particular construction in question, were the fundamental danger of state interference with and erosion of national policy by operating at all times without jurisdiction to do so and in a federally pre-empted area, and the fact that the union there was asserting a continuing right to picket a contractor generally, as shown by foot-

note 5 to the opinion, rather than a right simply to picket a particular job, until he should raise wages paid by him, so that the wage level dispute giving rise to the case was in fact continuing at the time of review and was not actually moot.

By way of comparison, the Petitioners here sought only a right to picket and strike in support of a definitive dispute over the terms of a new contract for one group. That dispute was forever terminated upon an agreement being reached and signed, and cannot in any way be revived.

Respondent submits that the present case, being a contract enforcement case, is clearly not within that class of general picketing cases represented by *Liner*, nor attended by the same considerations regarding the integrity of Labor Board jurisdiction or danger to federal policy, and that the principles of *Harris* and *Local No. 8-6* should apply to preclude review of the case for mootness.

IV

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court and that the petition for a writ of certiorari should be denied.

Dated March _____, 1965.

WILLIAM A. GILLEN

WILLIAM A. GILLEN
JESSE S. HOGG
GRANVILLE M. ALLEY, JR.
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Brief In Opposition To Petition For A Writ Of Certiorari was this day served upon the Petitioners herein by depositing the same in a United States Post Office mail box, with air mail postage prepaid, addressed to Bernard M. Mamet, Esq., Suite 1326, 327 La Salle Street, Chicago, Illinois 60604, Counsel of Record for Petitioners. Dated March _____, 1965.

WILLIAM A. GILLEN

WILLIAM A. GILLEN
Attorney for Respondent